IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, and COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION *Plaintiffs*, v. CAPITAL REGION WATER and THE CITY OF HARRISBURG, PA, *Defendants*.	Civil Action No. 1:15-cv-00291-CCC (Judge Christopher C. Conner)

COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION'S OPPOSITION TO MOTION TO INTERVENE

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I. INTRODUCTION

The Commonwealth of Pennsylvania, Department of Environmental Protection ("DEP") opposes the Motion to Intervene filed by the Lower Susquehanna Riverkeeper Association ("LSRA") (ECF No. 29) because the motion is untimely and LSRA's interests are adequately represented by the government plaintiffs in this matter. LSRA attempts to intervene in a matter regarding a nearly six-year old Partial Consent Decree by alleging that there has not been progress in implementing the decree. (LSRA Mem. in Supp. of Mot. to Intervene, ECF 30 at pg. 1-2 "LSRA Brief"). Furthermore, LSRA's request for intervention comes over three years after the case was administratively closed. LSRA Brief at pg. 3. LSRA fails to adequately explain its delay in seeking to intervene in this matter. LSRA also fails to meet the test set forth by this Court in *Wayne Land and Mineral Group v. Delaware River Basin Commission*, 3:16-CV-00897 2019 WL 2110515 (M.D.P.A. May 14, 2019) (*reversed and remanded on other grounds*).

Regarding its interests in the 2015 Partial Consent Decree, LSRA fails to explain anything more than "the government agencies represent 'the broad public interest,' and not specialized interest of LSRA" which would be true of any special interest group. LSRA Brief at pg. 20. LSRA's argument must fail because it does not take in to account the Third Circuit Court's holding in *United States v. Territory of the Virgin Islands,* 748 F.3d 514 (3d Cir. 2014). Plaintiffs DEP and the United States of America ("United States") through the federal Environmental Protection Agency are specifically tasked with the improvement and protection of the waters of the Commonwealth and waters of the United States, respectively, which include the Susquehanna River and Paxton Creek that LRSA seeks to protect and improve. While LSRA has a narrower scope of interest with its focus on the Lower Susquehanna Watershed, LRSA does not differentiate its reasons for intervention from seeking to compel compliance with the respective federal and state statutes in this matter. Therefore, intervention in the present matter should not be granted.

II. COUNTER STATEMENT OF PROCEDURAL HISTORY AND FACTUAL BACKGROUND

DEP is the Commonwealth's executive agency charged by the Pennsylvania General Assembly with the duty and authority to administer and enforce, *inter alia*, the Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§ 691.1 – 691.1001 ("CSL"); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 510-17 ("Administrative

Code"); and the rules and regulations promulgated thereunder. DEP is also a "State water pollution control agency" as defined in the Federal Clean Water Act, 33 U.S.C. §§ 1251 – 1376 ("CWA") Section 502(1), 33 U.S.C. § 1362(1). Since 1978, EPA has delegated to DEP the authority to administer the National Pollutant Discharge Elimination System ("NPDES") Permit Program pursuant to CWA Section 402, 33 U.S.C. § 1342. *Pennsylvania Public Interest Research Group, Inc. v. P.H. Glatfelter Company*, 128 F. Supp. 2d 747 (M.D. Pa. 2001). In this matter, DEP has been enforcing NPDES permit effluent limits, pursing the cessation of illicit discharges of sewage into waters of the Commonwealth, and seeking other injunctive relief and civil penalties pursuant to the laws it administers.

Capital Region Water ("CRW") is a municipal authority organized under the Municipal Authorities Act, *as amended*, 53 Pa. Cons. Stat. Ann. §§ 5601-5623, that owns a publicly owned treatment works ("POTW") which includes a treatment plant known as the Capital Region Water Advanced Wastewater Treatment Facility ("AWTF") and a conveyance system ("Conveyance System") which includes interceptors and pump stations that convey wastewater from the collection system to the AWTF. (ECF No. 1 ¶¶ 42-44). CRW acquired the POTW, AWTF, and Conveyance System after the City of Harrisburg ("City") entered into bankruptcy. (EFC. No. 4 at pgs. 1-2, and 4-5).

In February 2015, the United States and DEP (collectively "Plaintiffs") filed a Complaint against the City and CRW (collectively "Defendants") for violations of the CWA and the CSL. (ECF No. 1). The Complaint alleged that Defendants violated Section 301 of the CWA, 33 U.S.C. § 1311, and Sections 201, 202, and 401 of the CSL, 35 Pa. Stat. Ann. §§ 691.201, 202, 401, by discharging untreated sewage without a permit and by failing to comply with numerous CWA permit requirements. (ECF No. 1 ¶¶ 69-128.) Plaintiffs and Defendants simultaneously lodged a Partial Consent Decree to resolve the Complaint. (ECF No. 4). The Plaintiffs moved to enter the Partial Consent Decree on May 22, 2015 after the required 30-day public comment period. (Mot. to Enter, ECF No. 8); *Notice of Lodging of Proposed Partial Consent Decree*, 80 Fed. Reg. 8687 (Feb. 18, 2015). LSRA submitted no comments during the public comment period. The Partial Consent Decree was entered on August 24, 2015. (ECF No. 11).

On May 6, 2021, LSRA filed a motion to intervene in the above captioned matter pursuant to 33 U.S.C. § 1365 (b)(1)(B) and Federal Rule of Civil Procedure 24 (a)(1), or in the alternative Federal Rule of Civil Procedure 24(a)(2). (LSRA Brief at p. 2). LSRA alleges that sufficient progress has not been made in obtaining compliance from Defendants under both state and federal laws. *Id.* LSRA is a nonprofit organization based in the Lower Susquehanna Watershed. (LSRA Brief at 5). According to its Mission, LSRA is "dedicated to improving the ecological health

of the Lower Susquehanna River Watershed and the Chesapeake Bay". Lower Susquehanna Riverkeeper Association, *About Us*, May 19, 2021, http://www.lowersusquehannariverkeeper.org/about-us/. LSRA was founded in 2005. *Id.*

LSRA and its legal counsel, the Environmental Integrity Project ("EIP") have been aware of the Partial Consent Decree and the compliance issues surrounding the City and CRW for years. In August 2019, EIP compiled a report published on EIP's website based, in part, on sampling events it conducted on the Susquehanna River. Mariah Lamm, Lisa Hallowell, Abel Russ, and Tom Pelton, *Sewage Overflows in Pennsylvania's Capital, Harrisburg's chronic releases of sewage mixed with stormwater are an example of PA's failure to address water quality*, August 22, 2019, https://environmentalintegrity.org/wp-content/uploads/2019/08/PA-Sewage-Report-Final.pdf. In February 2020, LSRA through its counsel provided a letter to DEP and Governor Wolf again voicing concern for the Susquehanna River. (ECF No. 30 at ¶ 78 and LSRA Brief at pg. 6). A meeting between DEP and LSRA its counsel was held in April 2020 to discuss LSRA's concerns with the river. (ECF No. 30 at ¶ 79 and LSRA Brief at pg. 6) LSRA submitted state Right-to-Know Law requests in September 2020 and again in April of 2021. (ECF No. 30 at ¶ 80 and LSRA Brief at pg. 6).

Contrary to the assertions of LRSA, Defendants have made significant progress towards compliance with state and federal laws through the requirements of the Partial Consent Decree. Over the past 6 years, Defendants have completed numerous projects required under the Partial Consent Decree including but not limited to: submission of an updated Nine Minimum Controls Plan and Operation and Maintenance Manual; submission and receipt of a Municipal Separate Storm Sewer System ("MS4 permit"); submission and implementation of an initial flow metering and monitoring program; submission of semiannual progress reports; identification of priority and sensitive areas within Harrisburg; evaluation of the Front Street Interceptor with development of a construction schedule; and, many more ongoing reporting requirements. (Affidavit of Victor Landis ¶ 12 attached as Exhibit 1).

In addition to the above-mentioned projects, CRW plans to complete additional projects to bring its POTW into compliance. Id. at ¶ 13. Some of the projects proposed by CRW include: rehabilitation and increased capacity in the Front Street Interceptor scheduled for completion within 2021; Cured-In-Place Pipe lining to the Front Street Interceptor to be completed in 2022; continued enhancements to the AWTF repairs and equipment upgrades; and, increasing green technology to capture stormwater throughout Harrisburg. Id. at ¶ 14. These projects

will cost the City millions of dollars, increase the treatment capacity, reduce the need for overflow discharges, and will help to attain compliance. Id. at ¶¶ 15-17.

By its terms, the Partial Consent Decree did not resolve injunctive relief for implementing the Long Term Control Plan ("LTCP") and civil penalties for CRW's alleged violations. (ECF No. 4 ¶ 80.) Plaintiffs and Defendants intend to resolve the remaining allegations by either modifying the Decree or through a final decree. (ECF No. 9 at pg. 11.) To that end, Plaintiff and Defendants have met regularly through the period of the Partial Consent Decree for progress updates. (Exhibit 1 at ¶ 18.) Over the past 18 months, Plaintiffs and Defendant have been negotiating an additional document that will be filed with this Court. Id. at ¶ 18-19. These negotiations are active and ongoing, with submission to the Court forthcoming. Id. at ¶19.

III. ARGUMENT

A. LSRA Cannot Intervene as a Matter of Right Under Federal Rule Civil Procedure 24(a)(2)

The Federal Rules of Civil Procedure and case law from the Middle District of Pennsylvania and the Third Circuit provide the factors required to intervene as of right under Fed. R. Civ. P. 24(a)(2). Recently, in *Wayne Land and Mineral Group LLC,* 2019 WL 2110515, this Court reiterated the test a potential intervenor must meet when it cited to *Mountain Top Condominium Ass'n v. Dave Stabbert Master Builder, Inc.*, 72 F.3d 361, 366 (3d Cir. 1995) stating:

> "In this Circuit, a non-party may intervene as of right if it can satisfy four factors:
>
> (1) The application for intervention is timely;
>
> (2) The applicant has a sufficient interest in the litigation;
>
> (3) The interest may be affected or impaired, as a practical matter by the disposition of the action; and
>
> (4) The interest is not adequately represented by an existing party in the litigation."

"Each of these requirements must be met to intervene as of right, and it is the movant's burden to make the needed showing." *Mountain Top Condominium Ass'n,* 72 F.3d. at 366. Factors two and three of this test are not contested by DEP. However, LSRA is unable to overcome its burden of proving it meets factors one and four. Therefore, intervention must be denied.

1. LSRA's Motion to Intervene is Untimely

The motion filed by LSRA comes nearly six years after this Court entered the Partial Consent Decree resolving all but two claims in the Complaint, and over three years since the case was administratively closed. (ECF No. 23, Mar. 3, 2018 Order). The motion comes, at the very least, almost two full years after LSRA began writing reports and communicating with DEP regarding its concerns with the state of the Susquehanna River and Paxton Creek. "An application to intervene, whether of right or by permission, must be timely under the terms of Rule 24." *In re Fine Paper Antitrust Litig.*, 695 F.2d 494, 500 (3d Cir. 1982). The Third Circuit has noted

"Timeliness for purposes of a motion to intervene 'is not just a function of counting days; it is determined by the totality of the circumstances.'" *United States v. Alcan Aluminum, Inc.*, 25 F.3d 1174, 1181 (3d Cir. 1994). When considering the totality of the circumstances surrounding LSRA's motion to intervene, it is clear that the motion is untimely.

The Third Circuit provided a clear test for determining timeliness in *Mountain Top Condo. Ass'n,* 72 F.3d at 369 (citing *Fine Paper*, 695 F.2d at 500), stating consideration must be given to the following three factors: "(1) the stage of the proceeding; (2) the prejudice that delay may cause the parties; and (3) the reason for the delay." Each of these factors will be addressed separately below.

a. LSRA Attempts to Intervene After Significant Progress

LSRA is attempting to intervene at the very end of the proceeding in this matter, the Partial Consent Decree. There is currently no dispute pending on the docket for the Partial Consent Decree. Plaintiffs and Defendants are in negotiations for a new filing to potentially modify the Partial Consent Decree, but it has not yet been lodged before this Court. A crucial inquiry into timeliness is at what stage of the proceedings is the intervention occurring. *Id.* LRSA is seeking to intervene too late for the original Partial Consent Decree that was entered by this Court and too early for the next legal filing that will be presented for consideration by this Court following all applicable public participation procedures.

The Partial Consent Decree was filed and entered over six years ago with this Court. Like the local chapters of the Sierra Club, LSRA had the opportunity to provide comments to the United States and DEP. Unlike the local chapters of the Sierra Club, LRSA did not take the opportunity to provide any comments, even though the same circumstances LRSA now complains of were present at that time (lack of injunctive relief concerning the submission of a LTCP and civil penalties not addressed by the Partial Consent Decree). (See ECF No. 9, attachments 1, and 2, the only two comments received during the 30-day public comment period). LRSA also had the option to file a motion to intervene in 2015 and failed to do so. "A motion to intervene *after an entry of a decree* should be denied except in extraordinary circumstances.'" *Id.* at 369-70 (quoting *Fine Paper*, 695 F.2d at 500).

"Although the time of filing is not dispositive, 'to the extent the length of time an applicant waits before applying for intervention is a factor in determining timeliness, it should be measured from the point at which the applicant knew, or should have known, of the risk to its rights.'" *Wayne Land and Mineral Group* citing to *Alcan Aluminum*, 25 F.3d at 1183. Arguably, LSRA became actively aware of the issues in the summer of 2019, over a year after the matter had been closed by this court. LSRA waited almost two more years to file its motion to intervene with this Court.

b. LSRA's Intervention will Cause Prejudice and Delay

Not only is LSRA's motion untimely, it is likely to cause prejudice to and/or delay the disposition of this matter if the parties are required to relitigate issues pertaining to the 2015 Partial Consent Decree at the same time that negotiations continue on the potential modification of that decree through a new legal filing for consideration by this Court. In *Mountain Top*, the Third Circuit Court stated that "the stage of the proceeding is inherently tied to the question of the prejudice the delay in intervention may cause to the parties already involved." 72 F.3d at 370.

Defendants have been making steady progress toward meeting the requirements of the Partial Consent Decree since 2015. (Exhibit 1 ¶ 6). LSRA now moves to intervene in this matter six years after Plaintiffs and Defendants entered into the Partial Consent Decree. (LSRA Brief at pgs. 1-2). CRW has been remedying the problems of the system that it acquired from the City. (Exhibit 1 at ¶ 11-14). LRSA now seeks to focus limited resources on relitigating the 2015 Partial Consent Decree and demanding the imposition of civil penalties while the parties are actively negotiating the next iteration of the legal document to require the completion of concrete projects to increase capacity and reduce overflow discharges. (ECF No. 30-1 pg. 33, Exhibit 1 ¶¶ 18-19). The insertion of LRSA as a party at this time would further delay the parties progress toward the filing of a new legal document as even the filing of the motion to intervene has already diverted attention from that progress.

LSRA had the opportunity to participate in public comments during the submission of the Partial Consent Decree to this Court in 2015. LSRA also had an opportunity six years ago to intervene in this case and did not do so. However, LRSA will retain its rights in the future to timely participate in the public comment process for the anticipated legal filing before this Court. At this point in the proceedings (the 2015 Partial Consent Decree that was entered by this Court), allowing LSRA to intervene will only cause delay and prejudice future work between Plaintiffs and Defendants. While the parties are, and have been, open to receiving the information and resources that LRSA asserts that it would like to offer, LRSA does not need party status to provide such input when the parties are focusing on the next legal document and there is no pending legal dispute before this Court regarding the 2015 Partial Consent Decree.

c. LSRA Provides No Reason for its Delay

Intervention by LSRA at this point in the proceedings only serves to delay the continued progress being made by Plaintiffs and Defendants in this matter. LSRA has had ample opportunity to participate in this matter and failed to timely pursue intervenor status by waiting to file this motion to intervene. LRSA fails to provide plausible reasons for its delay in filing this motion for nearly six years after the Partial Consent Decree was entered by this Court. Instead, LSRA attempts to blame the parties' lack of progress and manufacture a date that it claims it became aware

of problems. (ECF No. 30-1 ¶¶ 8, 11, 83-92.) LRSA did not justify its delay in filing a timely motion to intervene. (LSRA Brief at pgs. 14-18).

LSRA's motion to intervene is untimely. It waited for nearly six years following the Partial Consent Decree to file its motion, it has provided no reason for the delay in its participation in this matter, and it has waited until a point in the litigation where participating can only cause delay and prejudice the ongoing work between Plaintiffs and Defendants. For these reasons and those addressed above, LSRA has not met its burden of providing a timely motion to intervene. LSRA's motion to intervene should therefore be denied as untimely.

2. LSRA's Interest in this Litigation is Adequately Represented

Not only is the motion to intervene submitted by LSRA untimely, LSRA's interest in this litigation is adequately represented by the United States and DEP. The Third Circuit clarified the law surrounding the adequacy of representation in *United States v. Territory of the Virgin Island,* 748 F.3d 514, 519-20 (3d Cir. 2014) stating that a "compelling showing" is required to rebut the presumption of adequate representation. *Virgin Islands* specifically clarified the rule after the *American Farm Bureau Fed'n v. U.S. E.P.A.,* 278 F.R.D. 98 (M.D. Pa. 2011) matter (that is heavily relied on by LSRA). In *Virgin Islands,* the Third Circuit Court stated:

> "Inadequate representation can be based on any of three possible grounds: '(1) that although the applicant's interests are similar to those of a party, they diverge sufficiently

> that the existing party cannot devote proper attention to the applicant's interests; (2) that there is collusion between the representative party and the opposing party; or (3) that the representative party is not diligently prosecuting the suit.'"

748 F.3d 514 at 519-520.

Importantly, the Court also found that "[a] presumption of adequacy attaches, however, 'if one party is a government entity charged by law with representing the interests of the applicant for intervention.'" *Id.* at 520. If a party to the litigation is a government entity as described above, an intervenor can only overcome the presumption of adequate representation by a "compelling showing… to demonstrate why [the government's] representation is not adequate" citing to *Mountain Top Condo. Ass'n,* 72 F.3d at 369 (quoting 7C Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1909 (1986)).

The Congress of the United States recognized and affirmed the states in the exercise of their vital roles in protecting the waters of the United States from pollution in the terms of the CWA. See, e.g., 33 U.S.C. §§ 1251, 1370. Similarly, DEP has a critical interest in preserving and improving the waters of the Commonwealth. *See, e.g.,* Article 1, Section 27 of the Pennsylvania Constitution; The Clean Streams Law, 35 P.S. §§ 691.1 *et. seq.*; the Pennsylvania Safe Drinking Water Act, 35 P.S. §§ 721-721.17; and, the Pennsylvania Sewage Facilities Act, *as amended,* 35 P.S. §§ 750.1 - 750.20.

Pursuant to its delegated authority and its own authority, DEP reviews and acts upon the NPDES permitting applications for municipal sewage facilities. In addition to administering the permitting aspects of the federal pollution control program, DEP carries out the primary enforcement of the federal water control program, ensuring that both permittees and non-permittees comply with the rules and regulations associated with restoring and maintaining clean water standards in the Commonwealth of Pennsylvania.

The Commonwealth, as a "State," has a responsibility to uphold the statutory and regulatory authority of the CSL. Section 202 of the Clean Streams Law, 35 P.S. § 693.202, holds that an unauthorized sewage discharge constitutes a statutory nuisance. Sections 201 and 202 of the CSL, 35 P.S. §§ 691.201 and 691.202, set forth the state statutory authority for proper management of sewage discharges into waters of the Commonwealth, similar to the federal statutory authority of Section 402 of the CWA, 33 U.S.C. §§ 1342.

DEP also possesses regulatory authority under 25 Pa. Code Section 92a.11, which set forth the implementation of the NPDES Program by DEP under the Federal Clean Water Act. Section 92a.9 of the state regulations, 25 Pa. Code § 92a.9, authorizes the NPDES permit for discharges as satisfying the Commonwealth's own requirements for sewage permits under Section 202 of the CSL, 35 P.S. § 691.202.

Likewise, the Commonwealth's role in ensuring sewerage facilities conduct satisfactory annual revisions sufficient to address existing operational or maintenance problems cannot be abdicated. Section 94.12 of the state regulations, 25 Pa. Code § 94.12, requires annual wasteload management reports to assist in continuous planning and review in order to restore and maintain clean water standards in the Commonwealth.

LSRA does not possess this unique permitting and enforcement role of the DEP. In carrying out its duties, DEP protects the interests of LSRA that have been asserted in the Motion to Intervene, compliance with the state and federal laws. LRSA's articulated interests do not significantly diverge to the point of establishing that DEP or EPA are not providing proper attention to LSRA's interests. CRW and the City are required by federal and state law to comply with their NPDES permits. Nothing in the state and federal requirements diverges from the asserted interests of LSRA.

LSRA relies on *American Farm Bureau Fed'n v. U.S. E.P.A.* to argue that it does not need to make any showing as to how it is inadequately represented by the government Plaintiffs. 278 F.R.D. 98 (M.D. Pa. 2011). However, LSRA failed to account for the holding in *Virgin Islands* that requires a "compelling showing" that LSRA's interests are not being represented by Plaintiffs. *Virgin Island,* 748 F.3d 514, 520. LSRA is seeking a cleaner Susquehanna River and compliance with state

and federal laws. It is DEP's job to protect and ensure that the Susquehanna River is capable of supporting its uses, including recreation, and that CRW and the City comply with state and federal laws. (Exhibit 1 ¶¶ 20-21). As the Western District of Pennsylvania stated in *Seneca Res. Corp. v. Highland Twp.*, No. CV 15-60 ERIE, 2016 WL 1213605, at 2 (W.D. Pa. Mar. 29, 2016),"[i]n short, when the benefits are the same to the government-party and the intervenor, clear and convincing evidence is needed to rebut the presumption." Here, the benefits to LSRA and DEP/EPA are identical, a cleaner Susquehanna River and compliance with the state and federal laws. LSRA fails to make even a minimal showing that it is not being adequately represented and therefore the motion to intervene should fail.

LSRA has failed to meet two factors of the motion to intervene test. First, its motion is untimely, coming six years after litigation commenced in this matter and over three years after this Court closed this case. Intervention by LSRA at this juncture of the litigation would only serve to delay this matter. Additionally, LSRA failed to show inadequate representation by Plaintiffs. Based upon the foregoing, LSRA's motion to intervene in this matter must fail.

B. LSRA Cannot Intervene as a Matter of Right under Federal Rule of Civil Procedure 24(a)(1)

The Federal Rules of Civil Procedure also govern how a party may intervene under Rule 24(a)(1) which provides: "On timely motion, the court must permit anyone to intervene who: is given an unconditional right to intervene by a federal

statute." LSRA correctly argues that it has been given a right to intervene pursuant to 33 U.S.C. § 1365(b)(1)(B), however it falls short of meeting the threshold for intervention due to its untimeliness. DEP incorporates its arguments set forth in Section I.A. of this brief, *supra,* into this section. For the same reasons stated above, allowing LSRA to intervene in this matter will cause undue delay and prejudice to Plaintiffs and Defendants in this matter. LSRA retains the opportunity to provide comments on any future consent documents between Plaintiffs and Defendants pursuant to 28 C.F.R. § 50.7. Not only are the interests of LSRA being adequately represented by Plaintiffs, LSRA has the opportunity to provide Plaintiffs with additional comments and concerns in the future. LSRA's motion to intervene should be denied for the same reasons articulated above.

IV. CONCLUSION

Based upon the foregoing, the Commonwealth of Pennsylvania, Department of Environmental Protection, respectfully requests that LSRA's motion to intervene be denied.

Respectfully submitted,

FOR THE COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

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Date: May 27, 2021

CERTIFICATION UNDER LOCAL RULE 7.8(B)

I hereby certify that the foregoing Opposition to Motion to Intervene complies with Local Rule 7.8(b) because, excluding the cover page, Table of Contents, Table of Authorities, and signatures, the brief contains a total of 4199 words.

Respectfully submitted,

FOR THE COMMONWEALTH OF PENNSYLVANIA,
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EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, and COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION *Plaintiffs*, v. CAPITAL REGION WATER and THE CITY OF HARRISBURG, PA, *Defendants*.	Civil Action No. 1:15-cv-00291-CCC (Judge Christopher C. Conner)

AFFIDAVIT OF VICTOR LANDIS

I, Victor Landis, the undersigned, am authorized to make the following statements based upon my personal knowledge:

1. I am an Environmental Group Manager, in the Office of Field Operations for the Department of Environmental Protection's ("DEP") Southcentral Regional Office, located at 909 Elmerton Avenue, Harrisburg, Pennsylvania 17110.

2. My position entails, among other things, managing the compliance and enforcement of DEP orders, reviewing and preparing Consent Orders and Agreements, Consent Assessments of Civil Penalty, Administrative Orders, and Field Orders. I also participate in the negotiation and subsequent enforcement of Consent Decrees.

3. I personally monitor the compliance with the Partial Consent Decree between DEP, the United States Environmental Protection Agency ("EPA"), the United States Department of Justice ("DOJ"), the City of Harrisburg ("City"), and Capital Region Water ("CRW").

4. I am personally aware of the noncompliance with the federal Clean Water Act ("CWA") and the Pennsylvania Clean Streams Law ("CSL") that necessitated the negotiations of the Partial Consent Decree.

5. I am personally aware of the compliance status of the Partial Consent Decree and the progress made by the City and CRW.

6. The City owned, operated, and maintained the Advanced Wastewater Treatment Facility ("AWTF") and the conveyance system including interceptors and pump stations prior to November 4, 2013. *See* Partial Consent Decree, ECF No. 4 pg. 1.

7. After November 4, 2013, CRW has owned, operated, and maintained the AWTF and conveyance system. *Id.* at pg. 2.

8. Before December 4, 2013, the City owned, operated, and maintained the collection system that collects combined stormwater and wastewater. *Id.* at pg. 2.

9. After December 4, 2013, CRW owned, operated, and maintained the collection system that collects combined stormwater and wastewater. *Id.* at pg. 2.

10. The City had financial difficulties and entered into agreements with CRW to ensure that there was an entity with the financial capability to operate and maintain the publicly owned treatment works ("POTW"), AWTF, collection and conveyance systems, and was responsible for carrying out the Partial Consent Decree. *Id.* at 4-5.

11. CRW and the City have been making steady progress toward compliance with the Partial Consent Decree since 2015.

12. CRW has completed the following projects required under the Partial Consent Decree: submission of an updated Nine Minimum Controls Plan and Operation and Maintenance Manual; submission and receipt of a Municipal Separate Storm Sewer System ("MS4 permit"); submission and implementation of an initial flow metering and monitoring program; submission of semiannual progress reports; identification of priority and sensitive areas within Harrisburg; evaluation of the Front Street Interceptor with development of a construction schedule; and, many more ongoing reporting requirements.

13. I am aware that CRW has additional projects planned to bring its POTW into compliance with the Partial Consent Decree, its National Pollutant Discharge Elimination Systems ("NPDES") Permit, the state CSL and the federal CWA.

14. CRW has proposed to DEP, EPA, and DOJ projects that include, but are not limited to: rehabilitation and increased capacity in the Front Street Interceptor scheduled for completion within 2021; Cured-In-Place Pipe lining to the Front Street Interceptor to be completed in 2022; continued enhancements to the AWTF repairs and equipment upgrades; and, increasing green technology to capture stormwater throughout Harrisburg.

15. Bringing a POTW such as the CRW system into compliance with the CSL and CWA will cost CRW millions of dollars.

16. Bringing a POTW such as the CRW system into compliance with the CSL and CWA will take many years to accomplish.

17. The projects completed and proposed by CRW will increase treatment capacity, reduce the need for overflow discharges, and will help attain compliance.

18. I am personally aware that DEP, EPA, DOJ, and CRW have met regularly throughout the life of the Partial Consent Decree for status updates and to negotiate further compliance through an additional decree.

19. I am aware that DEP, EPA, DOJ, and CRW are currently in active negotiations over submission of additional decree.

20. DEP is the Commonwealth agency tasked with protecting and ensuring that the Susquehanna River is capable of supporting its uses, including recreation.

21. DEP is the Commonwealth agency tasked with ensuring that the City and CRW comply with state and federal laws.

22. I make the following statements subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities. Each statement made in this Affidavit is true and correct to the best of my knowledge, information, and belief.

/s/ Victor Landis
Victor Landis
Clean Water Program
Environmental Group Manager